

FEDERAL CIRCUIT COURT OF AUSTRALIA

SURI v MINISTER FOR IMMIGRATION & ANOR

[2015] FCCA 1570

Catchwords:

MIGRATION – Migration Review Tribunal – Skilled (Residence) (Class VB) visa – validity of regulations – whether finding of a bogus document open on the facts – no jurisdictional error.

Legislation:

Migration Act 1958, s.476

Migration Amendment Regulation 2011 (No.1)

Migration Regulations 1994

Applicant:

GAURAV SURI

First Respondent:

MINISTER FOR IMMIGRATION &
BORDER PROTECTION

Second Respondent:

MIGRATION REVIEW TRIBUNAL

File Number:

SYG 887 of 2015

Judgment of:

Judge Street

Hearing date:

5 June 2015

Date of Last Submission:

5 June 2015

Delivered at:

Sydney

Delivered on:

5 June 2015

REPRESENTATION

Solicitors for the Applicant:	Mr Ford Christopher Levingston & Associates
Counsel for the Respondent:	Mr Johnson
Solicitors for the Respondent:	Sparke Helmore

ORDERS

- (1) The application be dismissed.
- (2) The applicant pay the first respondent's costs fixed in the sum of \$5800.
 - (i)

**FEDERAL CIRCUIT COURT
OF AUSTRALIA**

AT SYDNEY

SYG 887 of 2015

GAURAV SURI

Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION

First Respondent

MIGRATION REVIEW TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

1. This is an application within the Court's jurisdiction under s.476 of the *Migration Act 1958* for a Constitutional writ in respect of a decision of the delegate made on 18 March 2015, affirming a decision of the delegate not to grant the applicant a Skilled (Residence) (Class VB) visa. The applicant applied for the visa on 7 February 2008 and it was refused by the delegate on 18 October 2012. Relevantly, the Tribunal records that the delegate found that the TRA skills assessment was a bogus document. Thus the applicant did not satisfy the Public Interest Criteria 4020(1) that clearly application as a matter of law at the time of the determination by the delegate.
2. The grounds in the application are as follows:

1. The Tribunal fell into jurisdictional error in finding that the applicant failed to meet PIC 4020 as required by clause 885.224 of the Migration Regulations.

Particulars

(a) PIC 4020 did not apply in the current case because the alleged bogus document said to have emanated from TRA was a legal nullity by reason of the failure to validly appoint TRA as the relevant assessing authority; and,

(b) By reason of the failure to appoint TRA as the relevant assessing authority the requirement to undertake a skills assessment in satisfaction of the statutory scheme was not a requirement and thus any document produced in purported satisfaction of that requirement was not information that was false or misleading in a material particular.

(c) At all relevant times the TRA skills assessment was not 'given' to the second respondent's servants or the first respondent (see paragraph 52 of decision record).

3. There was no substance in relation to any of the grounds. They failed to identify any jurisdictional error. It is clearly the position that a bogus document was provided to the delegate.
4. The delegate was a relevant body in respect of PIC4020. There is no substance in the proposition that any of the regulations were invalid. To the extent that cl.885.222(1) provided the skills of the applicant has been assessed by the relevant assessing authority as suitable for the applicant's nominated skills occupation, there is no substance in the suggestion that that regulation was invalid. The provision is clearly within the scope of the regulation-making power. Moreover, it is clear that PIC4020 had pursuant to the *Migration Amendment Regulation 2011 (No.1)* pursuant to cl.5, application in the present case by reason of the application being one in respect of the amendments made to schedule 3 in relation to a visa application that was made but not finally determined before 2 April 2011.
5. There was no scope for the contention that PIC4020 had no application in the present case.
6. An argument was advanced by Mr Ford, the solicitor for the applicant, to the effect that because the entity in respect of which provided to the

delegate a bogus document was an entity that had not been authorised under the relevant regulation, being cl.885.222(1), therefore somehow the provision of the bogus document to the delegate could not give rise to the application of PIC8020. The substance of that argument was rejected by the Tribunal. It was correct to do so. It was open to the Tribunal to come to the adverse findings made in respect of the provision of the bogus document. Relevantly the Tribunal found:

45. Based on the evidence before it, the Tribunal finds that the review applicant submitted with his application for the skills assessment to TRA a work reference letter from Bakers Hut dated 25 July 2007 as evidence that he worked as a volunteer pastry cook at Bakers Hut from 13 August 2006 to 21 July 2007. A copy of this letter was provided to the Tribunal on 26 November 2014 by TRA.

7. The Tribunal noted that a copy of the letter was provided to the Tribunal. The Tribunal then said:

46. Based on the evidence before it, which the Tribunal considers of sufficiently probative value, the Tribunal finds that the work reference letter given to TRA contained a false statement that the review applicant completed more than 900 hours' work experience as a pastry cook at Bakers Hut. The Tribunal finds that the statement in the work reference letter regarding the applicant's 900 hours' work experience at Bakers Hut was purposefully false or misleading.

8. The Tribunal then made a finding:

47. Accordingly, the Tribunal finds that the skills assessment of 20 September 2007 (reference/receipt number TRA07/077197319) from TRA was obtained because of a false or misleading statement and that the skills assessment is a bogus document, being a document which the Tribunal reasonably suspects was obtained because of a false or misleading statement, whether or not made knowingly (s.97(c) of the Act).

9. The Tribunal identified that it was required to make a factual finding, whether the applicant submitted the TRA reference assessment letter to the Department. Relevantly the Tribunal concluded:

55. Based on the evidence before it, the Tribunal is satisfied that the applicant submitted the TRA skills assessment dated 20 September 2007 to the Department with his application for a

subclass 885 visa as evidence of successful skills assessment in his nominated occupation of a pastry cook.

56. Accordingly, the Tribunal is not satisfied that there is no evidence that the the review applicant has given, or caused to be given, to the Minister, or an officer of the Department, the Tribunal or a relevant assessing authority a bogus document or information that is false or misleading in a material particular in relation to his application for a subclass 885 visa. Accordingly, the Tribunal finds that the review applicant does not meet the requirements of paragraph 4020(1)(a).

10. It was in those circumstances that the Tribunal considered whether there were circumstances to waive the requirements of PIC4020 and relevantly found:

62. In considering whether to waive the requirements of subclause 4020(1), the Tribunal has considered whether there are compelling circumstances that affect the interests of Australia or compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen. The applicant did not claim the existence of any circumstances relevant to waiver provisions.

63. Accordingly, the Tribunal is not satisfied that there are compelling circumstances affecting the interests of Australia, or compassionate or compelling circumstances affecting the interests of Australian citizens, Australian permanent residents or eligible New Zealand citizens that justify the granting of the visa. Accordingly, the Tribunal has determined not to waive the requirements in subclause PIC 4020(1).

64. It follows that the review applicant does not satisfy the requirements of PIC 4020 for the purposes of cl.885.224 (a).

65. The Tribunal finds that the applicant does not meet the requirements for a Subclass 886 visa, as the Tribunal finds that the PIC 4020 in cl 886.225 (which parallels the requirement in 885.224) is not met, for the same reasons specified above in relation to the Subclass 885 visa.

66. The Tribunal finds that the applicant does not meet the requirements for a Subclass 887 visa, as nothing in the evidence before the Tribunal suggests that the applicant has held a visa of a type specified in cl. 887.212 – a mandatory requirement for that visa subclass.

11. There was no error of the kind identified in ground 1. It is clear that PIC4020 was both relevant and had application, and the Tribunal was correct to apply it. There is no substance in the proposition that the document was not a bogus document in relation to ground 2. It was a finding of fact of the Tribunal, and that finding was open on the material before the Tribunal.
12. Ground 3 is in substance equally misconceived, and it was open to the Tribunal to make the finding it did in respect of the Department being provided with the bogus document, which gave rise to the application of PIC4020. The application is dismissed.

I certify that the preceding twelve (12) paragraphs are a true copy of the reasons for judgment of Judge Street

Associate:

Date: 9 June 2015